

2009 DRAFTING REQUEST

Bill

Received: **10/06/2009**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Charles Schultz**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax, Individual - income**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Financial disability; individual may suspend deadlines for credits and refunds due to medical disability

Instructions:

See attached. Create a state provision similar to federal law as described in IRS Publication 556

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	mshovers 11/25/2009	natzke 12/07/2009	phenry 12/07/2009	_____	cdurst 12/07/2009	cdurst 12/11/2009	

FE Sent For: **"1" @ intro. 1/7/10**

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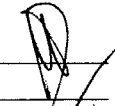
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FE Sent For:

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Shovers, Marc

From: Schultz, Charles
Sent: Tuesday, October 06, 2009 10:45 AM
To: Shovers, Marc
Subject: RE: Drafting Request

Marc,
After speaking with our Chief of Staff it was decided that we should have the bill drafted. The constituent in question was severely ill for almost 15 years and the 4 year window closed before she even knew what was going on. Please add the provision similar to that in IRS Pub. 556.

Charles Schultz
Office of Senator Dave Hansen
(608) 266-5670

From: Shovers, Marc
Sent: Tuesday, October 06, 2009 9:54 AM
To: Schultz, Charles
Subject: RE: Drafting Request

Hi Charles:

I assume the Senator's constituent is referring to the material that begins on the bottom of page 14 of the IRS Publication 556, "Periods of financial disability", and ends on page 15. It appears that under certain circumstances the IRS allows an individual to suspend the period of limitations on credits and refunds if a medical condition is expected to last for a continuous period of not less than 12 months which would prevent the individual from managing his or her financial affairs.

Generally under Wisconsin law, an individual may file an amended income tax return up to 4 years after its original unextended due date. See s. 71.75 (2):

71.75(2)
(2) With respect to income taxes and franchise taxes, except as otherwise provided in subs. (5) and (9) and ss. 71.30 (4) and 71.77 (5) and (7) (b), refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

If the constituent is concerned that a sick or disabled individual may pay "more money than is due" because of illness or disability, do you think this 4 year period for filing an amended return would be sufficient to allow corrections to be made to such a person's return? If not, I could add a provision to the statutes similar to the federal provision from IRS Publication 556. Thanks

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)

E-Mail: marc.shovers@legis.wisconsin.gov

From: Schultz, Charles
Sent: Tuesday, October 06, 2009 9:32 AM
To: Shovers, Marc
Subject: Drafting Request

Hi Marc,

Senator Hansen would like a bill drafted that would bring Wisconsin into line with federal tax code with respect to financial disability. A constituent thinks Wisconsin may take more money than is due when people are sick or disabled.

IRS Publication 556 (attached) spells out the federal law. Feel free to call me if you have any questions.

<< File: IRS publication 556.pdf >>

Charles Schultz
Office of Senator Dave Hansen
(608) 266-5670

This means that if you do not file your return, and you receive a notice of deficiency in the third year after the due date (with extensions) of your return and file suit with the Tax Court to contest the notice of deficiency, you may be able to receive a refund of excessive amounts paid within the 3-year period preceding the date of the notice of deficiency.



The IRS may postpone for up to 1 year certain tax deadlines, including the time for filing claims for refund, for taxpayers who are affected by a terrorist attack occurring after September 10, 2001. For more information, see Publication 3920.

Claim for refund by estates electing the installment method of payment. In certain cases where an estate has elected to make tax payments through the installment method, the executor can file a suit for refund with a Federal District Court or the U.S. Court of Federal Claims before all the installment payments have been made. However, all the following must be true before a suit can be filed.

- The estate consists largely of an interest in a closely-held business.
- All installment payments due on or before the date the suit is filed have been made.
- No accelerated installment payments have been made.
- No Tax Court case is pending with respect to any estate tax liability.
- If a notice of deficiency was issued to the estate regarding its liability for estate tax, the time for petitioning the Tax Court has passed.
- No proceeding is pending for a declaratory judgment by the Tax Court on whether the estate is eligible to pay tax in installments.
- The executor has not included any previously litigated issues in the current suit for refund.
- The executor does not discontinue making installment payments timely, while the court considers the suit for refund.



If in its final decision on the suit for refund the court redetermines the estate's tax liability, the IRS must refund any part of the estate tax amount that is disallowed. This includes any part of the disallowed amount previously collected by the IRS.

Protective claim for refund. If your right to a refund is contingent on future events and may not be determinable until after the time period for filing a claim for refund expires, you can file a protective claim for refund. A protective claim can be either a formal claim or an amended return for credit or refund. Protective claims are often based on current litigation or expected changes in the tax law, other legislation, or regulations. A protective claim preserves your right to claim a refund when the contingency is resolved. A protective claim does not have to

state a particular dollar amount or demand an immediate refund. However, to be valid, a protective claim must:

- Be in writing and be signed,
- Include your name, address, social security number or individual taxpayer identification number, and other contact information,
- Identify and describe the contingencies affecting the claim,
- Clearly alert the IRS to the essential nature of the claim, and
- Identify the specific year(s) for which a refund is sought.

Generally, the IRS will delay action on the protective claim until the contingency is resolved. Once the contingency is resolved, the IRS may obtain additional information necessary to process the claim and then either allow or disallow the claim.

Mail your protective claim for refund to the address listed in the instructions for Form 1040X, under *Where To File*.

Exceptions

The limits on your claim for refund can be affected by the type of item that forms the basis of your claim.

Special refunds. If you file a claim for refund based on one of the items listed below, the limits discussed earlier under *Time for Filing a Claim for Refund* may not apply. These special items are:

- A bad debt,
- A worthless security,
- A payment or accrual of foreign tax,
- A net operating loss carryback, and
- A carryback of certain tax credits.

The limits discussed earlier also may not apply if you have signed an agreement to extend the period of assessment of tax.



For information on special rules on filing claims for an individual affected by a terrorist attack, see Publication 3920.

Periods of financial disability. If you are an individual (not a corporation or other taxpaying entity), the period of limitations on credits and refunds can be suspended during periods when you cannot manage your financial affairs because of physical or mental impairment that is medically determinable and either:

- Has lasted or can be expected to last continuously for at least 12 months, or
- Can be expected to result in death.



The period for filing a claim for refund will not be suspended for any time that someone else, such as your spouse or guardian, was authorized to act for you in financial matters.

To claim financial disability, you generally must submit the following statements with your claim for credit or refund:

1. A written statement signed by a physician, qualified to make the determination, that sets forth:
 - a. The name and a description of your physical or mental impairment,
 - b. The physician's medical opinion that your physical or mental impairment prevented you from managing your financial affairs,
 - c. The physician's medical opinion that your physical or mental impairment was or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months, and
 - d. To the best of the physician's knowledge, the specific time period during which you were prevented by such physical or mental impairment from managing your financial affairs, and
2. A written statement by the person signing the claim for credit or refund that no person, including your spouse, was authorized to act on your behalf in financial matters during the period described in paragraph (1)(d) of the physician's statement. Alternatively, if a person was authorized to act on your behalf in financial matters during any part of the period described in that paragraph, the beginning and ending dates of the period of time the person was so authorized.



The period of limitations will not be suspended on any claim for refund that (without regard to this provision) was barred as of July 22, 1998.

Limit on Amount of Refund

If you file your claim within 3 years after filing your return, the credit or refund cannot be more than the part of the tax paid within the 3 years (plus the length of any extension of time granted for filing your return) before you filed the claim.

Example 1. You made estimated tax payments of \$1,000 and got an automatic extension of time from April 15, 2003, to August 15, 2003, to file your 2002 income tax return. When you filed your return on that date, you paid an additional \$200 tax. Three years later, on August 15, 2006, you file an amended return and claim a refund of \$700. Because you filed within 3 years after filing your return, you could get a refund of any tax paid after April 15, 2003.

Example 2. The situation is the same as in Example 1, except that you filed your return on October 31, 2003, 2½

months after the extension period ended. You paid an additional \$200 on that date. Three years later, on October 27, 2006, you file an amended return and claim a refund of \$700. Although you filed your claim within 3 years from the date you filed your original return, the refund is limited to \$200. The estimated tax of \$1,000 was paid before the 3 years plus the 4-month extension period.

Claim filed after the 3-year period. If you file a claim after the 3-year period, but within 2 years from the time you paid the tax, the credit or refund cannot be more than the tax you paid within the 2 years immediately before you filed the claim.

Example. You filed your 2002 tax return on April 15, 2003. You paid \$500 in tax. On November 2, 2004, after an examination of your 2002 return, you had to pay \$200 in additional tax. On May 2, 2006, you file a claim for a refund of \$300. Your refund will be limited to the \$200 you paid during the 2 years immediately before you filed your claim.

Processing Claims for Refund

Claims are usually processed shortly after they are filed. Your claim may be denied, accepted as filed, or it may be examined. If a claim is examined, the procedures are almost the same as in the examination of a tax return.

However, if you are filing a claim for credit or refund based only on contested income tax or on estate tax or gift tax issues considered in previously examined returns and you do not want to appeal within the IRS, you should request in writing that the claim be immediately rejected. A notice of claim disallowance will then be promptly sent to you. You have 2 years from the date of mailing of the notice of disallowance to file a refund suit in the United States District Court or in the United States Court of Federal Claims.

Explanation of Any Claim for Refund Disallowance

The IRS must explain to you the specific reasons why your claim for refund is disallowed or partially disallowed. Claims for refund are disallowed based on a preliminary review or on further examination. Some of the reasons your claim may be disallowed include the following.

- It was filed late.
- It was based solely on the unconstitutionality of the revenue acts.
- It was waived as part of a settlement.
- It covered a tax year or issues which were part of a closing agreement or an offer in compromise.
- It was related to a return closed by a final court order.

If your claim is disallowed for these reasons, or any other reason, the IRS must send you an explanation.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-37067

MES.....

nwn

font

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
x-ref ✓

gen

- 1 AN ACT ...; **relating to:** extending the time period to claim a refund for an
2 individual who is affected by a period of financial disability.✓

four

four-year

Analysis by the Legislative Reference Bureau

Generally under current law, an individual may file a claim for an income tax refund within four years of the unextended date on which the tax return was due. Under this bill, the four year limitation period for claiming a refund does not apply to a period of financial disability, which is a medically determinable physical or mental impairment that prevents an individual from managing his or her financial affairs. Federal law currently contains a similar provision for a period of financial disability.

Under the bill, if an individual who is affected by a period of financial disability, files with his or her refund claim the required statement from his or her physician, and a personal statement specifying that no other individual, such as a spouse, guardian, or agent, was able to act on the individual's behalf in financial matters, the department of revenue must pay the refund to which the individual would otherwise be entitled. The affected individual must, however, file his or her claim and statements within four years of the end of the period of financial disability. If another individual such as a spouse, guardian, or agent is able to act in financial matters on behalf of the affected individual for a period of less than four years, the affected individual may still claim a period of financial disability.

four

four

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.75^x (2) of the statutes is amended to read:

2 71.75 (2) With respect to income taxes and franchise taxes, except as otherwise
3 provided in subs. (5) ~~and~~, (9), and (11), and ss. 71.30 (4) and 71.77 (5) and (7) (b),
4 refunds may be made if the claim therefor is filed within 4 years of the unextended
5 date under this section on which the tax return was due.

6 History: 1987 a. 312; 1987 a. 411 ss. 96, 187; 1989 a. 31; 1991 a. 39; 1993 a. 205; 1995 a. 27, 404; 1997 a. 27; 1999 a. 9.

7 **SECTION 2.** 71.75 (11) of the statutes is created to read:

8 71.75 (11) (a) 1. With regard to an individual, the 4-year limitation period
9 described in sub. (2) does not apply during a period of financial disability, as
10 described in par. (b). If an individual who claims a period of financial disability
11 submits to the department with his or her refund claim the statements under pars.
12 (c) and (d), the department shall pay the refund if it otherwise would have been paid,
13 provided that the individual submits his or her claim and statements within 4 years
14 of the end of his or her period of financial disability.

15 2. A period of financial disability may not apply to an individual for any period
16 of time during which another individual, such as the individual's spouse, guardian,
17 or agent acting under a durable power of attorney, is authorized to act on the
18 individual's behalf in financial matters. If another individual is authorized to act in
19 financial matters, on behalf of an individual who would otherwise be affected by a
20 period of financial disability, for a period of less than 4 years, the affected individual
 may claim a period of financial disability under subd. 1.

and subject to
subd. 2.,

1 (b) A period of financial disability may be claimed by an individual who is not
2 able to manage his or her financial affairs because of a medically determinable
3 physical or mental impairment to which at least one of the following applies:✓

4 1. The individual's physician states in writing that the condition has lasted, or
5 is expected to last, continuously for a period of at least 12 months.✓

6 2. The individual's physician states in writing that he or she expects the
7 individual's condition to result in the individual's death.✓

8 (c) A written statement signed by a physician who is qualified to make a
9 determination described in par. (b) ✓ shall include at least all of the following:

10 1. The name and a description of the individual's physical or mental
11 impairment.✓

12 2. The physician's medical opinion that the individual's impairment prevented
13 the individual from managing his or her financial affairs.✓

14 3. The physician's medical opinion that the individual's impairment was or can
15 be expected to result in death, or that it has lasted, or can be expected to last, for a
16 continuous period of at least 12 months.✓

17 4. To the best of the physician's knowledge, the specific time period during
18 which the individual was prevented by his or her physical or mental impairment
19 from managing the individual's financial affairs.✓

20 (d) A written statement signed by the individual who requests a refund and
21 claims a period of financial disability shall specify that no other individual was
22 authorized to act on the individual's behalf in financial matters during the period
23 described in par. (c) 4.✓ or, if another individual was so authorized to act on the
24 individual's behalf in financial matters during the period described in par. (c) 4.✓, the
25 specific dates during which such authorization was in effect.✓

1 **SECTION 3. Initial applicability.**

2 (1) This act first applies to a period of financial disability that is in effect on the
3 effective date of this subsection.✓

4 (END)

Barman, Mike

From: Wagnitz, John
Sent: Friday, December 11, 2009 10:16 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3706/1 Topic: Financial disability; individual may suspend deadlines for credits and refunds due to medical disability

Please Jacket LRB 09-3706/1 for the SENATE.